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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/607,646

06/27/2003

Guyton P. Swindell

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23373 7590 04/07/2009  
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EXAMINER

PHAN, THIEM D

ART UNIT

PAPER NUMBER

3729

MAIL DATE

DELIVERY MODE

04/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: GUYTON P. SWINDELL, DOUGLAS M. DUKE  
and MARK A. BOXER

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Application No. 10/607,646  
Technology Center 3700

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Mailed: April 6, 2009

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Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.  
PERRY, Supervisory Paralegal Specialist, Review Team.

**ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER**

This application was electronically received by the Board of Patent Appeals and Interferences on April 1, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**EXAMINER'S ANSWER**

**Evidence Relied Upon**

Section §1207.02 of the *Manual of Patent Examining Procedure*

(MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed November 26, 2008, is deficient because the "Evidence Relied Upon" section fails to include the reference Applicants' Admitted Prior Art cited on pages 6-7 in the Examiner's Answer's grounds of rejection of claim 11 under 35 USC § 103(a).

Appropriate correction is required.

**CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Examiner's Answer issued November 26, 2008, defective;
- 2) issue a PTO-90 citing the missing reference listed under the Evidence

Relied Upon section, paragraph (8); and

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/bar

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